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In re Application of	:	
James D. Wilson	:	Petition for Supervisory Review
Application Number 10/798,708	:	under 37 C.F.R. §1.181
Filed: March 11, 2004	:	
For: TIRE-DETECTING WHEEL CHOCK	:	
APPARATUS	:	

This is a decision on the petition filed on August 14, 2006, under 37 C.F.R. §1.181 requesting supervisory review of the propriety of the finality of the office action mailed on June 13, 2006.

The petition is GRANTED.

Background

- A non-final office action mailed on October 6, 2005, rejected claims 1, 4-6, and 8 under 35 U.S.C. §103(a) as unpatentable over Cherico, U.S. patent No. 3,824,536, in view of Reynard, U.S. patent No. 6,781,516, and claims 2 and 3 as unpatentable over Cherico in view of Reynard et al, and further in view of Fischer et al., U.S. published application No. 2004/0056763 A1.
- A response and a request for a three-month extension of time were received on April 3, 2006 (Certificate of Mailing dated March 22, 2006). That response amended claim 1 to include further limitations regarding the "sensor means" previously set forth.
- A final office action mailed on June 13, 2006 rejected claims 1 and 4-6 under 35 U.S.C. §103(a) as unpatentable over Metz, U.S. Patent No. 6,336,527, in view of Geldon, U.S. Patent No. 5,457,838. Claims 1, 2, and 4-6 were also rejected under 35 U.S.C. §103(a) as unpatentable over Hageman, U.S. Patent No. 6,276,496 in view of Alexander, U.S. Patent No. 6,033,174.

Analysis

Petitioner argues that the new grounds of rejection introduced by the examiner in the final rejection were not necessitated by applicant's amendments of the claims, and thus the rejection cannot be made final under MPEP §706.07(a). Regarding claim 1, Petitioner states that the amendment made to independent claim 1 was "merely filed to *clarify* the claims." However, it is clear from the remarks filed with the April 3 response that the amendment to claim 1 was made in

order to overcome the prior art rejection. In particular, the paragraph bridging the end of page 5 through the top of page 6 of the remarks points out that the applied prior art includes a mechanical sensor, while claim 1 as amended sets forth a non-mechanical, non-contact type sensor. Thus, absent other considerations, the new grounds of rejection applied against claim 1 would not preclude a final office action.

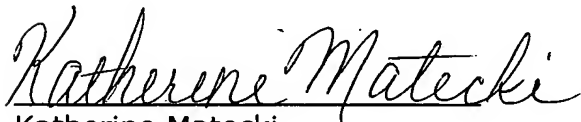
However, a review of the remaining claims reveals that the "inductive proximity sensor" which is recited in amended claim 1 as one alternative sensor means, was recited in claim 2 prior to the amendment and rejected in the non-final office action as described above. Thus, both amended claim 1 and claim 2 could have been rejected as unpatentable over Cherico in view of Reynard et al, and further in view of Fischer et al., U.S. published application No. 2004/0056763 A1, as set forth in the first office action. The examiner's reliance on different references in the final rejection constitutes a new ground of rejection that was not necessitated by the amendment to claim 1.

Conclusion

The petition for supervisory review of the finality of the office action mailed on June 13, 2006, is GRANTED. The finality of the office action mailed on June 13, 2006, is withdrawn. Should petitioner file a response to the office action, it will be entered and treated as a response under 37 C.F.R. §1.111. However, Petitioner's requested relief that the claims be allowed as they stand will not be granted, since the rejection of claims is an appealable, not petitionable matter and will therefore not be addressed in this decision.

The period for response set in the June 13, 2006, communication continues to run¹.

Telephone inquiries should be directed to Katherine Matecki at (571) 272-6951.



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¹ **§ 1.181 Petition to the Director.**

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(f) The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.